

109TH CONGRESS
1ST SESSION

S. 2140

To enhance protection of children from sexual exploitation by strengthening section 2257 of title 18, United States Code, requiring producers of sexually explicit material to keep and permit inspection of records regarding the age of performers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 16, 2005

Mr. HATCH (for himself and Mr. BROWNBACK) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To enhance protection of children from sexual exploitation by strengthening section 2257 of title 18, United States Code, requiring producers of sexually explicit material to keep and permit inspection of records regarding the age of performers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Children
5 from Sexual Exploitation Act of 2005”.

1 **SEC. 2. RECORD KEEPING OF DIGITAL IMAGES.**

2 Section 2257 of title 18, United States Code, is
3 amended—

4 (1) in subsection (a), by inserting after “video-
5 tape,” the following: “digital image, digitally- or
6 computer-manipulated image of an actual human
7 being, picture,”; and

8 (2) in subsection (f)(4), by inserting after
9 “video” the following: “digital image, digitally- or
10 computer-manipulated image of an actual human
11 being, picture,”.

12 **SEC. 3. OTHER RECORD KEEPING REQUIREMENTS.**

13 Section 2257 of title 18, United States Code, is
14 amended—

15 (1) in subsection (f), by—

16 (A) in paragraph (3), by striking “and”
17 after the semicolon;

18 (B) in paragraph (4), by striking the pe-
19 riod and inserting “; and”; and

20 (C) by adding at the end the following:

21 “(5) for any person to whom subsection (a) ap-
22 plies to refuse to permit the Attorney General or his
23 or her designee to conduct an inspection under sub-
24 section (c).”; and

25 (2) by striking subsection (h) and inserting the
26 following:

1 “(h) In this section—

2 “(1) the term ‘actual sexually explicit conduct’
3 means actual but not simulated conduct as defined
4 in clauses (i) through (v) of section 2256(2)(A) of
5 this title;

6 “(2) the term ‘produces’—

7 “(A) means—

8 “(i) actually filming, videotaping,
9 photographing, creating a picture, digital
10 image, or digitally- or computer-manipu-
11 lated image of an actual human being;

12 “(ii) digitizing an image, of a visual
13 depiction of sexually explicit conduct; or,
14 assembling, manufacturing, publishing, du-
15 plicating, reproducing, or reissuing a book,
16 magazine, periodical, film, videotape, dig-
17 ital image, or picture, or other matter in-
18 tended for commercial distribution, that
19 contains a visual depiction of sexually ex-
20 plicit conduct; or

21 “(iii) inserting on a computer site or
22 service a digital image of, or otherwise
23 managing the sexually explicit content, of a
24 computer site or service that contains a

1 visual depiction of, sexually explicit con-
2 duct; and

3 “(B) does not include activities that are
4 limited to—

5 “(i) photo or film processing, includ-
6 ing digitization of previously existing visual
7 depictions, as part of a commercial enter-
8 prise, with no other commercial interest in
9 the sexually explicit material, printing, and
10 video duplication;

11 “(ii) distribution;

12 “(iii) any activity, other than those
13 activities identified in subparagraph (A),
14 that does not involve the hiring, con-
15 tracting for, managing, or otherwise ar-
16 ranging for the participation of the de-
17 picted performers;

18 “(iv) the provision of web-hosting
19 services when the provider does not, and
20 reasonably cannot, manage the sexually ex-
21 plicit content of the computer site or serv-
22 ice; or

23 “(v) the provision of an electronic
24 communication service or remote com-
25 puting service when the provider does not,

1 and reasonably cannot, manage the sexu-
 2 ally explicit content of the computer site or
 3 service; and

4 “(3) the term ‘performer’ includes any person
 5 portrayed in a visual depiction engaging in, or as-
 6 sisting another person to engage in, actual sexually
 7 explicit conduct.”.

8 **SEC. 4. RECORD KEEPING REQUIREMENTS FOR SIMU-**
 9 **LATED SEXUAL CONDUCT.**

10 (a) IN GENERAL.—Chapter 110 of title 18, United
 11 States Code, is amended by inserting after section 2257
 12 the following:

13 **“§ 2257A. Record keeping requirements for simulated**
 14 **sexual conduct**

15 “(a) Whoever produces any book, magazine, peri-
 16 odical, film, videotape, or other matter that—

17 “(1) contains one or more visual depictions of
 18 simulated sexually explicit conduct; and

19 “(2) is produced in whole or in part with mate-
 20 rials which have been mailed or shipped in interstate
 21 or foreign commerce, or is shipped or transported or
 22 is intended for shipment or transportation in inter-
 23 state or foreign commerce;

1 shall create and maintain individually identifiable records
2 pertaining to every performer portrayed in such a visual
3 depiction.

4 “(b) Any person to whom subsection (a) applies shall,
5 with respect to every performer portrayed in a visual de-
6 piction of simulated sexually explicit conduct—

7 “(1) ascertain, by examination of an identifica-
8 tion document containing such information, the per-
9 former’s name and date of birth, and require the
10 performer to provide such other indicia of his or her
11 identity as may be prescribed by regulations;

12 “(2) ascertain any name, other than the per-
13 former’s present and correct name, ever used by the
14 performer including maiden name, alias, nickname,
15 stage, or professional name; and

16 “(3) record in the records required by sub-
17 section (a) the information required by paragraphs
18 (1) and (2) and such other identifying information
19 as may be prescribed by regulation.

20 “(c) Any person to whom subsection (a) applies shall
21 maintain the records required by this section at their busi-
22 ness premises, or at such other place as the Attorney Gen-
23 eral may by regulation prescribe and shall make such
24 records available to the Attorney General for inspection
25 at all reasonable times.

1 “(d)(1) No information or evidence obtained from
2 records required to be created or maintained by this sec-
3 tion shall, except as provided in this section, directly or
4 indirectly, be used as evidence against any person with re-
5 spect to any violation of law.

6 “(2) Paragraph (1) shall not preclude the use of such
7 information or evidence in a prosecution or other action
8 for a violation of this chapter or chapter 71, or for a viola-
9 tion of any applicable provision of law with respect to the
10 furnishing of false information.

11 “(e)(1) Any person to whom subsection (a) applies
12 shall cause to be affixed to every copy of any matter de-
13 scribed in subsection (a)(1) in such manner and in such
14 form as the Attorney General shall by regulations pre-
15 scribe, a statement describing where the records required
16 by this section with respect to all performers depicted in
17 that copy of the matter may be located.

18 “(2) If the person to whom subsection (a) applies is
19 an organization the statement required by this subsection
20 shall include the name, title, and business address of the
21 individual employed by such organization responsible for
22 maintaining the records required by this section.

23 “(f) It shall be unlawful—

24 “(1) for any person to whom subsection (a) ap-
25 plies to fail to create or maintain the records as re-

1 quired by subsections (a) and (c) or by any regula-
2 tion promulgated under this section;

3 “(2) for any person to whom subsection (a) ap-
4 plies knowingly to make any false entry in or know-
5 ingly to fail to make an appropriate entry in, any
6 record required by subsection (b) or any regulation
7 promulgated under this section;

8 “(3) for any person to whom subsection (a) ap-
9 plies knowingly to fail to comply with the provisions
10 of subsection (e) or any regulation promulgated pur-
11 suant to that subsection; or

12 “(4) for any person knowingly to sell or other-
13 wise transfer, or offer for sale or transfer, any book,
14 magazine, periodical, film, video, or other matter,
15 produced in whole or in part with materials which
16 have been mailed or shipped in interstate or foreign
17 commerce or which is intended for shipment in
18 interstate or foreign commerce, that—

19 “(A) contains one or more visual depictions
20 made after the date of enactment of this sub-
21 section of simulated sexually explicit conduct;
22 and

23 “(B) is produced in whole or in part with
24 materials which have been mailed or shipped in
25 interstate or foreign commerce, or is shipped or

1 transported or is intended for shipment or
2 transportation in interstate or foreign com-
3 merce;

4 which does not have affixed thereto, in a manner
5 prescribed as set forth in subsection (e)(1), a state-
6 ment describing where the records required by this
7 section may be located, but such person shall have
8 no duty to determine the accuracy of the contents of
9 the statement or the records required to be kept;
10 and

11 “(5) for any person to whom subsection (a) ap-
12 plies to refuse to permit the Attorney General or his
13 or her designee to conduct an inspection under sub-
14 section (c).

15 “(g) As used in this section, the terms ‘simulated sex-
16 ually explicit conduct’, ‘produces’, and ‘performer’ have
17 the same meaning as in section 2257(h) of this title.

18 “(h)(1) Whoever violates this section shall be impris-
19 oned for not more than 1 year, and fined in accordance
20 with the provisions of this title, or both.

21 “(2) Whoever violates this section in an effort to con-
22 ceal a substantive offense involving the causing, trans-
23 porting, permitting or offering or seeking by notice or ad-
24 vertisement, a minor to engage in sexually explicit conduct
25 for the purpose of producing a visual depiction of such

1 conduct in violation of this title, or to conceal a sub-
 2 stantive offense that involved trafficking in material in-
 3 volving the sexual exploitation of a minor, including receiv-
 4 ing, transporting, advertising, or possessing material in-
 5 volving the sexual exploitation of a minor with intent to
 6 traffic, in violation of this title, shall be imprisoned for
 7 not more than 5 years and fined in accordance with the
 8 provisions of this title, or both.

9 “(3) Whoever violates paragraph (2) after having
 10 been previously convicted of a violation punishable under
 11 that paragraph shall be imprisoned for any period of years
 12 not more than 10 years but not less than 2 years, and
 13 fined in accordance with the provisions of this title, or
 14 both.”.

15 (b) CHAPTER ANALYSIS.—The chapter analysis for
 16 chapter 110 of title 18, United States Code, is amended
 17 by inserting after the item for section 2257 the following:

“2257A. Record keeping requirements for simulated sexual conduct.”.

